IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.82 OF 2002

Shri Anthony Jose Nazareth Rodrigues,
Proprietor, 'Jose Bar/Restaurant',
Menezes Braganza Road,
Panaji, Goa. ..... Petitioner.

V/s.

1. Panaji Municipal Council,
through its Chairperson,
Panaji Municipal Council,
Panaji, Goa.

2. The Chief Officer,
Panaji Municipal Council,
Panaji, Goa.

3. The State of Goa,
through its Chief Secretary,
Panaji, Goa. ..... Respondents.

Mr. N. Costa Frias, Advocate for the petitioner.

Mr. A.F. Diniz, Advocate for respondents No.1 and 2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for respondent No.3.

CORAM : D.G. DESHPANDE &
P.V. HARDAS, JJ.

DATE : JANUARY 21, 2003.

ORAL JUDGMENT : (Per HARDAS, J.)

By this petition, the petitioner is challenging the order issued by the first respondent, Panaji Municipal Council, sealing the premises where the bar of the petitioner is located, on the ground that the petitioner had been operating his bar named "Jose Bar", without valid licence from the Panaji

Municipal Council as is required under the Goa Municipalities Act, 1968. The petitioner has also challenged the vires of Bye Law No.1 of the Trade and Occupation Licensing Bye-Laws, 1989, on the ground that the said Bye Laws are ultra vires Section 262 of Goa Municipalities Act, read with Section 307 of the said Act.

2. The facts, as are necessary to decide this petition, are set out hereunder:

The petitioner is holder of a valid licence issued by the Directorate of Food and Drugs Administration under Rule 5(4)(i) of the Goa, Daman and Diu Prevention of Food Adulteration Rules, 1982. The said licence which is issued in Form 'C' is a licence for the manufacture for sale/storage/distribution of cooked/prepared food at a place called "Jose Bar" situated at Dr. Menezes Road, Tiswadi. The said licence has been renewed from time to time and was valid upto 3lst December, 2002.

3. The grand-mother of the petitioner was the holder of a valid excise licence for sale of country liquor in the said premises. During her life time the said excise licence, which was originally standing in the name of his grand-mother, was transferred in the

name of the petitioner by the Commissioner of Excise, Government of Goa. By order impugned in the present petition, the premises of the petitioner were sealed on the ground that he did not have a valid licence from the Panaji Municipal Council as is required under Bye Law No.1 of the Trade and Occupation Licensing Bye-Laws, 1989.

4. Mr. N. Costa Frias, learned Counsel appearing on behalf of the petitioner has submitted that on the date on which the premises of the petitioner came to be sealed, the petitioner was having a valid licence issued by the Directorate of Food & Drugs Administration, Panaji for manufacture/ sale/storage/distribution of cooked/prepared food. The insistence of the Authorities for a valid licence under Bye Law No.1 of the Trade and Occupation Licensing Bye-Laws, 1989, is illegal and the said Bye Law is thus ultra vires Section 262 of the Goa Municipalities Act.

5. Mr. A.F. Diniz, learned Counsel appearing on behalf of respondents No.1 and 2 has also urged before us that the Bye Laws have been framed under Section 265, read with Section 307 of the Goa Municipalities Act and the petitioner had applied for a licence under the Act. It is also urged before us by learned Counsel on behalf of respondents No.1 and 2

that possession of the licence under the provisions of Food Adulteration Act would not entitle the petitioner to run the bar and restaurant in defiance of Section 265 of the Goa Municipalities Act. The application of the petitioner was rejected at the threshold as the petitioner had not obtained the no objection certificate from the owner, which is required under Bye- Law No.7. It is also urged before us that the petitioner has suppressed that he was prosecuted for running restaurant without licence and pursuant to the prosecution, the petitioner was convicted of the offence. Despite conviction, the petitioner again recommenced the running of the bar and restaurant and therefore, the respondent had no option but to seal the premises. Thus, the premises of the petitioner were sealed on 20.7.2001 after the appellate authority rejected the appeal filed by the petitioner.

6. Learned Advocate General has urged before us that Section 262 of Goa Municipalities Act is an exception to Sections 259 and 260 of Goa Municipalities Act. The Bye-Laws and the Schedule have been framed in pursuance of Sections 265 and 307 of Goa Municipalities Act. According to him, on plain reading of these two provisions, it would be apparent that Bye-Law No.1 is not ultra vires Section 262 of Goa Municipalities Act. Further, it is urged before us that though the

petitioner has licence under the provisions of Food Adulteration Act, the said licence is restricted to manufacture/sale/storage etc., of cooked/prepared food and the said licence does not permit the petitioner to run a bar. For running the bar, the petitioner must have a licence under the Trade and Occupation Bye Laws.

7. Sub-Section (1) of Section 259 of Goa Municipalities Act, reads as under :

> "(1) No person shall use or permit to be used any premises in the municipal area –
>
> (a) as an eating house, tea or coffee shop, restaurant, dining-saloon, refreshment room or for a like purpose; or
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> (b) for the preparation or sale for the purposes of trade of any article of human food or drink; or
>
> (c) as a hotel or a lodging house,
>
> except under and in accordance with

the conditions of a licence granted under the provisions of bye-laws made in this behalf."

8. Sub-Section (1) of Section 260 of Goa Municipalities Act, reads as under :

"(1) No person shall -

(a) carry on the trade or business of a dealer in, or importer or seller of, sweet-meats, milk butter or other milk products; or

(b) use or permit to be used for the purposes of trade, any premises for storing or selling milk or for making, storing or selling butter or other milk- products or sweet-meats.

except under and in accordance with the conditions of a licence granted under the provisions of the bye-laws made in this behalf."

9. Section 262 of Goa Municipalities Act, reads as under :

> " Notwithstanding anything contained in sections 259 and 260 no licence shall be required under the said sections for the use of any premises for any purpose or for carrying on any trade specified therein, in respect of which a licence has been obtained under the law for the time being in force in the [State of Goa] regarding prevention of food adulteration."

10. From a plain reading of Section 259 of Goa Municipalities Act, it is apparent that no person can use or permit to be used any premises either as an eating house, tea or coffee shop, restaurant, dining saloon, etc., or for preparation or sale for the purposes of trade or any articles of human food or drink or an a hotel or lodging house, without obtaining a licence under the provisions of the bye laws. Similar is the position that emerges on reading of Section 260 of Goa Municipalities Act. Section 260 of Goa Municipalities Act mandates that no person shall carry on trade or business of a dealer in or importer or seller of, sweet-meats, etc. or use or permit to be

used for the purposes of trade, any premises for storing or selling milk or for making, storing or selling butter or other milk products, etc., without having a licence granted under the provisions of the bye-laws. Section 262 of Goa Municipalities Act is an exception to Sections 259(1) and 260(1) of Goa Municipalities Act. Section 262 of Goa Municipalities Act mandates that despite the requirement of obtaining a valid licence under Sections 259 and 260 of the said Act, no licence shall be required in case a licence has been obtained under the Prevention of Food Adulteration Act. Thus, the petitioner would not be required to obtain a licence under Sections 259 or 260 of Goa Municipalities Act, as he holds a valid licence under the Prevention of Food Adulteration Act. However, that licence is restricted for the sale of cooked or prepared food only.

11. Sub-Section (1) of Section 265 of Goa Municipalities Act, reads as under :

> "(1) No person shall use any premises in the municipal area [for any trade or occupation] except under and in accordance with the conditions of a licence granted under the provisions of the

bye-laws made in this behalf."

The words "for any trade or occupation" were substituted by Act 9 of 1980 with effect from 24.5.1980. The statement of objects and reasons for the amendment read, as under :

> " For a systematic growth of cities, it is necessary that areas are earmarked for specific purposes like Residential, Commercial, etc. It is a known fact that such planning has already been carried out. However, the Municipal Council has no power under the Act to control carrying of various trades in the council area unless such trade is one mentioned in Schedule VII appended to the Act. The result is, that various trades which do not figure in Schedule VII, are being carried out in places not reserved for commercial activities thereby hampering the systematic growth of cities. "

12. Section 307 of Goa Municipalities Act is an enabling provision for framing bye laws. In

pursuance of these powers under Sections 265 and 307 of Goa Municipalities Act, Trade and Occupation Licensing ByeLaws, 1989 came to be framed. By Law No.1 requires that no person shall, except in accordance with the conditions of licence granted under the Bye Laws, keep or allowed to be kept in the Municipal area any of the articles specified in Schedule or use the premises for the purpose of transacting trade/occupation as shown in the Schedule. Bye-Law No.24 spells out the conditions which are required to be observed by the licensee in respect of the premises used for eating house, tea or coffee shop, restaurant, etc. The Schedule to these Bye-Laws specifies 25 different activities for which the licence is required. Entry No.24 in the Schedule refers to tea/coffee hotels and Entry No.26 refers to "any other non-specified Trade or Occupation".

13. Undisputedly, the petitioner was running a bar and restaurant in the said premises. The petitioner, since he holds a valid licence issued under the Goa, Daman and Diu Prevention of Food Adulteration Rules, is certainly exempted from obtaining licence under the Trade and Occupation Licensing Bye-Laws, 1989 for the manufacture/storage/sale/ distribution of cooked/prepared food. However, the petitioner is also running a bar in the said premises and for running a bar, the petitioner would certainly be required to

obtain a licence under Entry No.26 i.e. "any other non-specified Trade or Occupation". There are certain conditions which are prescribed in obtaining such licence and one such condition stipulates that the person applying for licence has to produce the no objection certificate from the owner of the premises. In the present case, obviously, in view of the dispute, the petitioner was not in a position to produce the no objection certificate from the owner.

14. Under Sections 259 and 260 of Goa Municipalities Act, a licence is essential for carrying on activities which are enumerated in the said two sections. As earlier stated by us, Section 262 is an exception to Sections 259 and 260 of Goa Municipalities Act. Section 265 in its sweep, is wider than Sections 259 and 260 of Goa Municipalities Act inasmuch as it requires a licence for the use of any premises for any trade or occupation. Section 265, in its application, would obviously be controlled by the provisions of Section 262 of Goa Municipalities Act. Thus, if a person holds a valid licence as is required under Section 260(1), the provisions of Section 265 (1) of Goa Municipalities Act, would not be applicable to him. Thus the requirement of Sections 259, 260 and 265 of Goa Municipalities Act is the possession of a valid licence and the bye-laws which have been framed under

Section 307 cannot be held to be ultra vires Sections 259 and 260 of Goa Municipalities Act on the specious ground that the bye-laws contemplate issuance of a licence and laying down certain conditions for issuance of a licence. The bye laws are certainly not inconsistent with the provisions of Sections 259, 260 and 265 of Goa Municipalities Act. Section 265 of Goa Municipalities Act has, therefore, to be read as encompassing in its fold all trades and occupation other than the ones which are specified in Sections 259 and 260 of Goa Municipalities Act. From the very nature of the language of the said Section, the requirement is the possession of a valid licence. The Schedule accordingly lists 25 different specified activities which require a licence. Entry No.26 encompasses in its fold all other trades and occupation which are not specified in earlier entries. Thus, the bye laws are not inconsistent with Section 262 of the Act. As stated by us earlier, Section 262 is an exception to Sections 259 and 260 of Goa Municipalities Act, but that exception does not do away the requirement of having a valid licence altogether, but only excepts the persons who have a licence under the provisions of Food Adulteration Rules.

15. Learned Counsel appearing on behalf of respondents No.1 and 2 did state before us that there

is no provision for sealing the premises. The only provision is under Section 324 of Goa Municipalities which empowers a Magistrate, on an application by the Authority competent, to grant a licence or permission and order the closure of the premises. Undisputedly, in this case, no permission from the Magistrate was obtained for closure of the premises. Therefore, the respondents have exceeded their authority in sealing the premises. We are, therefore, of the considered view that the action of the respondent in sealing the premises is wholly illegal and without any authority of law. We, accordingly, direct the authorities to remove the seals put on the premises on 20.7.2001.

16. In the result, therefore, Writ Petition is partly allowed. Rule is made absolute in terms of prayer clauses (a) and (b) and the Rule in respect of other reliefs stands discharged. In the circumstances, there shall be no order as to costs.

D.G. DESHPANDE, J.

P.V. HARDAS, J.

ssm.